

patent 6,574,335 (Kalmanek). The Office Action recognizes that Jiang does not disclose that a ringback audio presentation is selected in accordance with called subscriber identified criteria that is related to the identity of the caller as required by claims 7 and 15, or geographical location of the caller as required by claims 8 and 16, or the time of day of the call as required by claims 9 and 17.¹ Kalmanek has been relied upon for concluding that such provisions in the Jiang arrangement would have been obvious. This conclusion is respectfully traversed.

Legal precedent is well settled that claims may not be considered patentable under 35 U.S.C. § 103 only if the prior art teaching would have led a person having ordinary skill in the art to modify the prior art or to combine prior art references to arrive at the claimed invention. The requisite motivation to support the ultimate legal conclusion of obviousness under 35 U.S.C. §103 is not an abstract concept, but must stem from the applied prior art as a whole without the benefit of the disclosure of the present invention.

Kalmanek describes ringback features in the abstract and section 6 (column 19, line 55+). These descriptions relate the ringback signal to the called number, not the calling number identity or geographical location of the caller, as required by the claims. There is no mention in Kalmanek of relating the ringback signal to the time of day.

The Office Action characterizes the Kalmanek disclosure relied upon as follows:

Kalmanek discloses a method wherein a prestored ringback signal is selected based on the ring back message and/or the called number (i.e., a called number inherently includes area code which designates a specific geographical area) (see abstract). Kalmanek additionally discloses a method wherein some services require the announcement to be customized, perhaps based on the originating number, dialed number, time-of-day.

¹ For the record, reference is made to the Remarks of the Amendment filed March 9, 2005 that point out that the Jiang application is entitled only to the disclosure of its parent provisional application for prior art applicability to the present invention.

The Office Action refers to the area code of the called number. The area code of the called number, per se, is not identification of the area code or the geographical location of the calling party. The Office Action statement that the Kalmanek announcement “be customized, *perhaps* based on the originating number, dialed number, time-of-day” has not been related to any identified disclosure in the reference, nor has applicant found a suggestion in Kalmanek for the quoted statement.

Looking to the Kalmanek disclosure, for example the abstract to which reference is made in the Office Action, it is submitted that a person skilled in the art would be led to an opposite conclusion. The abstract associates a calling party with a first network and a called party with a second network. As clearly stated, “[t]he selected prestored ring back signal is associated with the second network”, i.e., the *called* party. In contrast, the claims require that the subscriber identified criteria for determining the audio presentation is related to the identity of, or geographical location of, the *caller*. Kalmanek also does not disclose or suggest that the audio presentation be related to the time of day. It is submitted therefore, that a person of ordinary skill in the art would have found no reason from the reference teachings to modify the Jiang arrangement to arrive at the present claimed invention.

Accordingly, withdrawal of the rejection and allowance of the application are respectfully solicited. To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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A handwritten signature in black ink, reading "Gene Z. Robinson". The signature is fluid and cursive, with the first name "Gene" being the most prominent.

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